(o) For the purposes of this section, 240.15a–6(b) of this title shall include a new paragraph (9) to read as follows:

''(9) The term *noticed financial institution* means a financial institution as defined at §400.3(j) of this title that has provided notice to its appropriate regulatory agency pursuant to §400.1(d) of this title.''

(p) For the purposes of this section, §240.15a–6(b) of this title shall include a new paragraph (10) to read as follows:

''(10) The term *appropriate regulatory agency* has the meaning set out in §400.3(b) of this title.''

(q) Section 240.15a–6(c) of this title is modified to read as follows:

''(c) The Secretary of the Treasury, upon receiving notification from an appropriate regulatory agency that the laws or regulations of a foreign country have prohibited a foreign broker or dealer, or a class of foreign brokers or dealers, engaging in activities exempted by paragraph (a)(3) of this rule, from providing, in response to a request from an appropriate regulatory agency, information, documents, or records within its possession, custody, or control, testimony of foreign associated persons, or assistance in taking the evidence of other persons, wherever located, related to activities exempted by paragraph (a)(3) of this rule, may consider to be no longer applicable the exemption provided in paragraph (a)(3) of this rule with respect to the subsequent activities of the foreign broker or dealer or class of foreign brokers or dealers if the Secretary finds that continuation of the exemption is inconsistent with the public interest, the protection of investors and the purposes of the Government Securities Act.''

(Approved by the Office of Management and Budget under control number 1535–0089)

[55 FR 27462, July 3, 1990; 55 FR 29293, July 18, 1990, as amended at 60 FR 11026, Mar. 1, 1995]

PART 402—FINANCIAL RESPONSIBILITY

Sec.

AUTHORITY: 15 U.S.C. 78o–5(b)(1)(A), (b)(4).

SOURCE: 52 FR 27931, July 24, 1987, unless otherwise noted.

§402.1 Application of part to registered brokers and dealers and financial institutions; special rules for futures commission merchants and government securities interdealer brokers; effective date.

(a) *Application of part.* This part applies to all government securities brokers and dealers, except as otherwise provided herein.

(b) *Registered brokers or dealers.* This part does not apply to a registered broker or dealer that is subject to §240.15c3–1 of this title (SEC Rule 15c3–1).

(c) *Financial institutions.* This part does not apply to a government securities broker or dealer that is a financial institution and that is:

(1) Subject to the rules and regulations of its appropriate regulatory agency concerning capital requirements, or

(2) A branch or agency of a foreign bank subject to regulation, supervision, and examination by state or Federal authorities having regulatory or supervisory authority over commercial bank and trust companies.

(d) *Futures commission merchants.* A futures commission merchant subject to §1.17 of this title that is a government securities broker or dealer but is not a registered broker or dealer shall not be subject to the limitations of §402.2 but rather to the capital requirement of §1.17 or §240.15c3–1, except paragraph (e)(3) thereof, of this title, whichever is greater.

(e) *Government securities interdealer broker.* (1) A government securities

interdealer broker, as defined in paragraph (e)(2) of this section, may, with the prior written consent of the Secretary, elect not to be subject to the limitations of §402.2 but rather to be subject to the requirements of §240.15c3–1 of this title (SEC Rule 15c3–1), except paragraphs (c)(2)(ix) and (e)(3) thereof, and paragraphs (e)(3) through (8) of this section by filing such election in writing with its designated examining authority. A government securities interdealer broker may not revoke such election without the written consent of its designated examining authority.

(2)(i) *Government securities interdealer broker* means an entity engaged exclusively in business as a broker that effects, on an initially fully disclosed or identified group basis, transactions in government securities for counterparties that are government securities brokers or dealers who have registered or given notice pursuant to section 15C(a)(1) of the Act (15 U.S.C. 78o–5(a)(1)), and that promptly transmits all funds and delivers all securities received in connection with its activities as a government securities interdealer broker and does not otherwise hold funds or securities for or owe money or securities to its counterparties and, except as provided in paragraph (e)(2)(ii) of this section, does not have or maintain any government securities in its proprietary or other accounts. For the purpose of this paragraph (e)(2)(i), ''identified group basis'' means that a counterparty has consented to the identity of the specific group of entities from which the other counterparty is chosen.

(ii) A government securities interdealer broker may have or maintain government securities in its proprietary or other accounts only as a result of:

(A) Engaging in overnight reverse repurchase or securities borrowed transactions solely for the purpose of facilitating the process of clearing government securities transactions;

(B) Engaging in overnight repurchase or securities loaned transactions solely for the purpose of reducing its financing expense in connection with the clearance of government securities transactions;

(C) Subordinated loans subject to satisfactory subordination agreements pursuant to §240.l5c3–1(d) of this title;

(D) Collateral or depository requirements of a clearing corporation or association with which it participates in the clearance of government securities transactions; or

(E) The investment of its excess cash. The maturities of any government securities held or maintained under paragraph (e)(2)(ii) (C), (D), or (E) of this section may not exceed one year.

(3) In order to qualify to operate under this paragraph (e), a government securities interdealer broker shall at all times have and maintain net capital, as defined in §240.15c3–1(c)(2) of this title with the modifications of this paragraph (e), of not less than $1,000,000.

(4) For purposes of this paragraph (e), a government securities interdealer broker need not deduct loans to commercial banks for one business day of immediately available funds (commonly referred to as ''sales of federal funds'') held by the government securities interdealer broker in connection with the clearance of securities on the day the loan is made.

(5) For purposes of this paragraph (e), a government securities interdealer broker need not deduct net pair-off receivables and money differences until the close of business of the third business day following the day the funds are due and give-up receivables outstanding no more than 30 days from the billing date, which shall be no later than the last day of the month in which they arise, as otherwise would be required under §240.15c3–1(c)(2)(iv)(B) of this title.

(6) For purposes of this paragraph (e), a government securities interdealer broker shall deduct from net worth ¼ of 1 percent of the contract value of each government securities failed-to-deliver contract which is outstanding 5 business days or longer. Such deduction shall be increased by any excess of the contract price of the failed-to-deliver contract over the market value of the underlying security.

(7) For purposes of this paragraph (e), a government securities interdealer broker may exclude from its aggregate indebtedness computation indebtedness

adequately collateralized by government securities outstanding for not more than one business day and offset by government securities failed to deliver of the same issue and quantity. In no event may a government securities interdealer broker exclude any overnight bank loan attributable to the same government securities failed-to-deliver contract for more than one business day. A government securities interdealer broker need not deduct from net worth the amount by which the market value of securities failed to receive outstanding longer than thirty (30) calendar days exceeds the contract value of those failed to receive as required by §240.15c3–1(c)(2)(iv)(E) of this title.

(8)(i) For purposes of this paragraph (e), a government securities interdealer broker shall deduct from net worth 5 percent of its net exposure to each counterparty.

(ii) *Net exposure.* For purposes of this paragraph (e), net exposure shall equal:

(A) The sum of the dollar amount of funds, debt instruments, other securities, and other inventory at risk, in the first instance, to the government securities interdealer broker in the event of the counterparty's default,

(B) Reduced, but not to less than zero, by the sum of:

(*1*) The dollar amount of funds, debt instruments, other securities, and other inventory at risk, in the first instance, to the counterparty in the event of the government securities interdealer broker's default;

(*2*) The deductions taken from net worth for unsecured receivables, repurchase and reverse repurchase deficits, aged fails to deliver, and aged fails to receive arising from transactions with the counterparty;

(*3*) Demand deposits in the case where the counterparty is a commercial bank;

(*4*) Loans for one business day of immediately available funds (commonly referred to as ''sales of federal funds'') held by the government securities interdealer broker in connection with the clearance of securities on the day the loan is made in the case where the counterparty is a commercial bank;

(*5*) Custodial holdings of securities in the case where the counterparty is a clearing bank or clearing broker of the government securities interdealer broker; and

(*6*) Exposure to a counterparty due to holding marketable instruments subject to market risk haircuts under appendix A to this section (§402.2a) for which the counterparty is the obligor.

(9) On the application of the government securities interdealer broker, the designated examining authority may extend the periods of time in this paragraph (e) if it determines that the extension is warranted because of exceptional circumstances and that the government securities interdealer broker is acting in good faith.

(f) *Effective date.* This part shall be effective July 25, 1987, *provided however,* that until the last business day in October 1987, registered government securities brokers and dealers need not comply with §402.2 (a), (b), and (c) as long as:

(1) A registered government securities broker or dealer that acts solely as an introducing broker within the meaning of §240.15c3–1(a)(2) of this title has and maintains liquid capital, as defined in §402.2(d), in an amount of not less than $5,000; and

(2) Any other registered government securities broker or dealer has and maintains liquid capital, as defined in §402.2(d), in an amount of not less than $50,000.

[52 FR 27931, July 24, 1987, as amended at 60 FR 11024, Mar. 1, 1995]

§402.2 Capital requirements for registered government securities brokers and dealers.

(a) *General rule.* No government securities broker or dealer shall permit its liquid capital to be below an amount equal to 120 percent of total haircuts as defined in paragraph (g) of this section.

(b)(1) *Minimum liquid capital for brokers or dealers that carry customer accounts.* Notwithstanding the provisions of paragraph (a) of this section, a government securities broker or dealer that carries customer or broker or dealer accounts and receives or holds funds or securities for those persons within the meaning of §240.15c3–1(a)(2)(i) of this title, shall have and maintain liquid capital in an amount not less than $250,000 (see paragraph (a)